

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

ROGER WALSH,

Plaintiff,

v.

CIVIL ACTION NO. 5:10-cv-00463

DAVID BERKEBILE,

Defendant.

MEMORANDUM OPINION AND ORDER

This action is before the Court pursuant to the pro-se filing by the Plaintiff of a Complaint pursuant to 42 U.S.C. § 1983 (Document Nos. 1, 7 and 19).

By *Standing Order* (Document No.2) entered on April 8, 2010, this action was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636. On February 22, 2011, the Magistrate Judge submitted *Proposed Findings and Recommendation* (Document No. 26) wherein it is recommended that this Court deny the Plaintiff's Application to Proceed Without Prepayment of Fees (Document Nos. 5 and 15), dismiss the Plaintiff's Complaint (Document Nos. 1, 7 and 19), and remove this matter from the Court's docket.


Neither party has timely filed objections to the Magistrate Judge's *Proposed Findings and Recommendation*. The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985).

Failure to file timely objections constitutes a waiver of *de novo* review and the Plaintiff's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*, and **ORDERS** that the Plaintiff's Application to Proceed Without Prepayment of Fees (Document Nos. 5 and 15) be **DENIED**, the Plaintiff's Complaint (Document Nos. 1, 7 and 19) be **DISMISSED**, and this matter be **REMOVED** from the Court's docket.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge VanDervort, counsel of record, and any unrepresented party.

ENTER: April 22, 2011


IRENE C. BERGER
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA